



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 29, 1995

Ms. Elaine L. Fannin
Assistant General Counsel
Texas Department of Agriculture
P.O. Box 12847
Austin, Texas 78711

OR95-153

Dear Ms. Fannin:

You have asked whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 31662.

The Texas Department of Agriculture (the "department") received a request for information about a pesticide incident investigated by the department. You indicate that you have already released some documents to the requestor and that the investigation file is not yet complete. We note that an open records request applies only to information in existence when the request is received. Open Records Decision No. 452 (1986) at 3. You have submitted to this office for review documents held by the department that are responsive to the request. You contend that these documents are excepted from disclosure under section 552.103(a).

To show the applicability of section 552.103(a), a governmental entity must show that (1) litigation in a judicial or quasi-judicial proceeding is pending or reasonably anticipated and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. You have demonstrated that litigation is reasonably anticipated. Our review of the documents shows that they are related to that anticipated litigation. The documents at issue may therefore be withheld from disclosure.¹

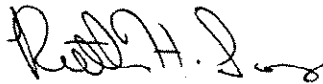
¹We did not review the documents that you marked as having already been released to the requestor. We assume that these documents were sent for informational purposes.

Generally, once information has been obtained by all parties to the anticipated litigation, no section 552.103(a) interest exists with respect to that information. Open Records Decision No. 349 (1982) at 2. If the opposing party in the pending litigation has already seen some of the records at issue, there would be no justification for now withholding those records from the requestor pursuant to section 552.103(a).

We note that the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982) at 3. Also, since the section 552.103(a) exception is discretionary with the governmental entity asserting the exception, it is within the department's discretion to release this information to the requestor. Gov't Code § 552.007; Open Records Decision No. 542 (1990) at 4.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Government Section

RHS/rho

Ref.: ID# 31662

Enclosures: Submitted documents

cc: Ms. Inez Suderman
130 Rio Grande Drive
Mission, Texas 78572
(w/o enclosures)